

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BETTY AGEE, Individually and as)		
Representative of the Estate of)		
RICHARD L. AGEE, (deceased), et al.)	CIVIL ACTION NO.	06-668
)		
Plaintiffs)		
)		
v.)		
)		
A.W. CHESTERTON, et al,)		
)		
Defendants.)		

**ANSWER OF DEFENDANT ALBANY INTERNATIONAL CORPORATION, WITH
AFFIRMATIVE DEFENSES AND CROSS CLAIMS TO
THE PLAINTIFFS' COMPLAINT**

Defendant Albany International Corporation answers the allegations set forth in Plaintiffs' Complaints as follows:

JURISDICTION AND VENUE

Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations as to jurisdiction and venue. Therefore, the allegations are denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

STATUTE OF LIMITATIONS

Answering defendant denies all of the plaintiffs' assertions in reference to the application of the Statute of Limitations.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

BACKGROUND FACTS – THE PLAINTIFFS

1. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

2. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

3. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

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117. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

BACKGROUND FACTS- THE DEFENDANTS

118. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of this Answer as if fully set forth herein.

119. Denied

120. (a) through (bb), Denied.

121. Denied

122. Denied.

123. Denied

124. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

DEFENDANT'S CONDUCT AND PLAINTIFF'S DECENDANT'S INJURY

125. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of this Answer as if fully set forth herein.

126. Denied.

127. Denied

128. Denied.

129. (a) through (r) Denied.

130. Denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

COUNT ONE

131. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of this Answer as if fully set forth herein.

132. (a) through (b), Denied.

133. Denied.

134. Denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

COUNT TWO

135. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

COUNT THREE

148. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

COUNT FOUR

155. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

156. Denied.

157. Denied.

158. Denied.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

AFFIRMATIVE DEFENSES

159. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

FIRST AFFIRMATIVE DEFENSE

160. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

161. The claims set forth in the Complaint are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

162. The plaintiffs were contributorily negligent in that they used and exposed themselves to products which they knew or should have known would be injurious to their health, and they failed to take reasonable precautions to guard against any dangers resulting therefrom.

FOURTH AFFIRMATIVE DEFENSE

163. The plaintiffs assumed the risk of any injuries about which they complained.

FIFTH AFFIRMATIVE DEFENSE

164. At all relevant times, the knowledge of other persons and business entities, and the ability of such other persons and business entities to take action to prevent the injuries of which plaintiffs complain, was superior to that of the answering defendant, and therefore, if there was any duty to warn plaintiffs, the duty was on those other persons and business entities and not on the answering defendant.

SIXTH AFFIRMATIVE DEFENSE

165. The answering defendant is immune from liability for any conduct performed in conformance with government specifications.

SEVENTH AFFIRMATIVE DEFENSE

166. The failure of plaintiff's employer to warn and/or safeguard plaintiffs from any possible health hazards associated with asbestos was an intervening and superseding cause of plaintiffs' alleged injuries.

EIGHTH AFFIRMATIVE DEFENSE

167. Plaintiffs' employers' failure to provide the proper protective equipment to insure a safe working environment was the proximate cause of any injuries of which plaintiffs complain.

NINTH AFFIRMATIVE DEFENSE

168. The Complaint fails to state a claim for punitive damages.

TENTH AFFIRMATIVE DEFENSE

169. The complaint fails to state a claim upon which relief can be granted for prejudgment interests.

ELEVENTH AFFIRMATIVE DEFENSE

170. The claims for punitive damages are barred by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of The United States of America and of the Constitution of the State of Delaware.

TWELFTH AFFIRMATIVE DEFENSE

171. Claims for punitive damages are barred by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

172. This action is barred by the doctrine of sophisticated purchaser.

FOURTEENTH AFFIRMATIVE DEFENSE

173. Plaintiff's injuries, if any, were solely and proximately caused by the negligence of some person or persons, corporation, association or other entity not a party to this lawsuit, or were solely and proximately caused by defects in products manufactured by some other person or person, corporation, association or legal entity not a party to this lawsuit.

FIFTEENTH AFFIRMATIVE DEFENSE

174. The plaintiff misused the asbestos containing product which misuse was the proximate cause or contributed to the injuries and damages of which plaintiff complains.

SIXTEENTH AFFIRMATIVE DEFENSE

175. If it is proven that the plaintiff came in contact with or was exposed to any products manufactured, sold and/or used by answering Defendant, said products were materially changed, altered or modified by others, including but not limited to the plaintiffs themselves.

SEVENTEENTH AFFIRMATIVE DEFENSE

176. Answering Defendant had no knowledge of the dangerous propensities of the material allegedly causing the injuries and damages to the plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

177. At the time of the manufacture, distribution, sale or use of any products for which answering Defendant is alleged to be liable, the body of knowledge in the scientific, medical and industrial communities did not recognize any risk of danger connected with the use of said products, and accordingly answering Defendant relies on the state-of-the-art defense.

NINETEENTH AFFIRMATIVE DEFENSE

178. In the event it is found that plaintiff was exposed to any products supplied by answering Defendant such exposure was *de minimus* and is not sufficient to establish a reasonable degree of probability that a product supplied by answering Defendant caused any injury to the plaintiff.

TWENTIETH AFFIRMATIVE DEFENSE

179. The alleged incident, injuries and damages of which the plaintiffs complain were caused by unauthorized, unintended or improper use of the products complained of and as a result

of the failure to exercise reasonable and ordinary care, caution or vigilance for which answering Defendant is not legally liable or responsible.

TWENTY-FIRST AFFIRMATIVE DEFENSE

180. Answering Defendant is entitled to a set-off for any amounts paid or to be paid by other Defendants as a settlement with plaintiffs.

TWENTY-SECOND AFFIRMATIVE DEFENSE

181. The complaint should be dismissed as to the answering Defendant under the doctrine of *forum non conveniens*.

TWENTY-THIRD AFFIRMATIVE DEFENSE

182. Answering defendant is not liable for the intentional torts of any of it's predecessors in-interest.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

183. Strict liability is not the law in the State of Delaware

TWENTY-FIFTH AFFIRMATIVE DEFENSE

184. Plaintiffs are estopped from proceeding with causes of actions alleged in their complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

185. The complaint fails to specify any willful or wanton conduct on the part of the answering defendant, and therefore, all claims for and references to the recovery of special damages in the complaint must be stricken.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

186. The complaint fails to specifically state the items of special damages claimed as required by Court Rule 9(g) and, therefore, all claims for and references to the recovery of special damages in the complaint must be stricken.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

187. The complaint fails to allege with specificity any acts, actions or conduct on the part of the answering defendant which constitute negligence, fraud or conspiracy as required by Court Rule 9 and therefore all claims and/or damages based upon allegations of negligence, fraud or conspiracy must be stricken.

TWENTY-NINTH AFFIRMATIVE DEFENSE

188. Plaintiffs' claims for punitive damages are barred by the Due Process clause of the Fourteenth Amendment of the Constitution of the United States of America.

THIRTIETH AFFIRMATIVE DEFENSE

189. Plaintiffs' claims for punitive damages are barred by the "double jeopardy" clause of the Fifth Amendment of the Constitution of the United States of America.

THIRTY-FIRST AFFIRMATIVE DEFENSE

190. The process of original service of process is insufficient; statutory and court rule requirements have not been satisfied.

THIRTY-SECOND AFFIRMATIVE DEFENSE

191. The claims have been compromised and settled with the named defendant.

MOTION TO STRIKE

192. The Complaint fails to allege any willful, wanton, or reckless conduct on the part of the answering Defendant specifically, and therefore, all claims for and reference to the recovery of punitive damages in the Complaint must be stricken as to the answering Defendant.

193. The Complaint fails to allege any acts, actions, or conduct on the part of the answering Defendant which constitute fraud or conspiracy with specificity as required by Federal District Court Civil Rule 9, therefore, all claims and/or damages based upon allegations of fraud or conspiracy must be stricken as to the answering Defendant.

MOTION TO DISMISS

194. References to strict liability and/or premises liability fail to state a claim upon which relief can be granted against the answering Defendant, and therefore, the Complaint must be dismissed.

195. The complaint must be dismissed, pursuant to Federal District Court Rule 12(b)(2), on the basis of a lack of personal jurisdiction over the answering Defendant.

CROSS CLAIM FOR CONTRIBUTION AND INDEMNIFICATION

196. The answering Defendant denies that it is liable to the plaintiff in any respect. However, in the event that the answering Defendant is held liable to the plaintiff, then it cross claims against each and every co-Defendant, on the grounds that the conduct of one or several co-Defendants, was the primary cause of the damage sustained by the plaintiff and that the answering Defendant, if liable at all, is only secondarily liable. The answering Defendant, therefore, is entitled to indemnification from each and every co-Defendant.

197. In the event that the answering Defendant is held primarily liable to the plaintiff, then the alleged wrongful acts of the co-Defendants are contributing causes of the damages

sustained by the plaintiff and the answering Defendant is entitled to contribution in any amount which it may be required to pay to the plaintiff as a result of the co-Defendant's wrongful acts, based on the relative degrees of fault determined pursuant to the provisions of Delaware's Uniform Contribution Among Tortfeasors Law, 10 Del. C. §6308.

ANSWERS TO CROSSCLAIMS

198. The answering defendant denies the allegations of any crossclaim that has been or may be asserted against it and demands that any such crossclaim be dismissed. Further, it is asserted that if liability is found, there should be apportionment made by trier of fact.

JURY DEMAND

Answering defendant hereby demands a Jury of Twelve to hear and decide all issues of fact which have been raised or may be raised by plaintiffs, defendant and co-defendants.

WHEREFORE, defendant, Albany International Corporation demands that the Complaint be dismissed with costs assessed to plaintiffs.

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

/s/ MATTHEW P. DONELSON

MATTHEW P. DONELSON (BAR ID#4243)
300 Delaware Avenue, 17th Floor
P.O. Box 1630
Wilmington, DE 19899-1630
302/428-3181
Attorney for Defendant
Albany International Corporation.

DATE: November 21, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BETTY AGEE, Individually and as)		
Representative of the Estate of)		
RICHARD L. AGEE, (deceased), et al.)	CIVIL ACTION NO.	06-668
)		
Plaintiffs)		
)		
v.)		
)		
A.W. CHESTERTON, et al,)		
)		
Defendants.)		

CERTIFICATE OF SERVICE

I, Matthew P. Doneslon, Esquire hereby certify that on the 21st day of November, 2006
A Notice of Appearance and Defendant's Answer to the Complaint was served by electronic
filing on the following counsel of record:

Robert Jacobs, Esquire
Jacobs & Crumplar, P.A.
2 E. 7th Street
Wilmington, DE 19801
Attorney for Plaintiffs

Jonathan L. Parshall, Esquire
Murphy, Spadaro & Landon
1011 Centre Road Suite 210
Wilmington, DE 19805
Attorney for Brandon Drying Fabrics, Inc

Donald E. Reid, Esquire
Morris Nichols Arsht & Tunnell, LLP
1201 N Market Street
P.O. Box 1347
Wilmington, DE 19899
Attorney for Georgia-Pacific Corporation

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

/s/ MATTHEW P. DONELSON
MATTHEW P. DONELSON (BAR ID#4243)
300 Delaware Avenue, 17th Floor
P. O. Box 1630
Wilmington, DE 19899-1630
Attorney for Defendant
Albany International Corporation

Dated: November 21, 2006

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Betty Agee, Individually and as Representative of the Estate of Richard A. Agee, et al.

(b) County of Residence of First Listed Plaintiff Lauderdale Cty., AL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
JACOBS + Crumplar, 800 EAST 7TH STREET
P.O. Box 1271, Wilmington, DE 19899

DEFENDANTS

A.W. Chesterton, ET. AL.

County of Residence of First Listed Defendant Suffolk Cty., MA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

UNKNOWN

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

Diversity Under 28 USC Section 1332

Brief description of cause:

Asbestos Personal Injury Action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23 \$1,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE NONE

DOCKET NUMBER N/A

DATE

11/21/06

SIGNATURE OF ATTORNEY OF RECORD

Walter P. Owl

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____